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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
i0/758,514	01/15/2004	William Orman Wollgast	03005	5796
39047	7590	02/24/2005	EXAMINER	
MACHETTA LAW FIRM, P.C 14614 FALLING CREEK DRIVE HOUSTON, TX 77068			MAMMEN, NATHAN SCOTT	
			ART UNIT	PAPER NUMBER
			3671	

DATE MAILED: 02/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/758,514

Applicant(s)

WOLLGAST ET AL.

Examiner

Nathan S Mammen

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 0126.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s), _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: The specification fails to mention a “clamp mechanism” (found in original claim 8 and new claims 15 and 20) or a “beveled edge” (found in original claim 8).

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “S-shape[d]” front surface, the “straight non-curved” front surface and the “beveled edge” (claim 8) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet”

pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3, 7, 8, 10, 15, 16, 20, 21 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,809,449 to Solaja.

The Solaja '449 patent discloses an attachment for securing to a skid steer loader (see col. 5, line 23). The attachment comprises a connecting frame (34, 38, 40) allowing for connection to the skid steer, a base (32) connected perpendicular to the connecting frame, a front surface (16, 20) connected to the end of the base opposite the connecting frame and vertically curved, and a support structure (30, 36) connected between the connecting frame and the base to provide strength to the attachment. The connecting frame has two supporting cutouts (46) at the bottom and a clamp mechanism (48) at the top. The front surface (16, 20) is perpendicular to the base (i.e., the longitudinal axis is perpendicular to the longitudinal axis of the base). The front surface includes a surface (20) for cutting. The front surface (e.g., at 20) is perpendicular to the ground.

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Regarding claims 2-3, 7, 10, 13: The curved front surface has a concave shape (defined from the center) and appears to have a radius of at least 2 feet. The front surface includes a straight, non-curved surface (20) at least 2 feet in length.

Regarding claims 15, 16, 20, 21: The attachment comprises two supporting cutouts (46) at the bottom and a clamp mechanism (44) at the top.

5. Claims 1-13, 15-24 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,819,444 to Desmarais.

The Desmarais '444 patent discloses an attachment for securing to a vehicle. The attachment comprises a connecting frame (50), a base (6), a curved front surface (2, 4), and a support structure (42) connected between the connecting frame and the base. The curved front surface is movable to a plurality of shapes so that it can create a concave shape (Fig. 5), convex shape, an S-shape (see, e.g., Fig. 10), or a straight non-curved shape. The attachment includes supporting cutouts (48) and a clamp mechanism (18). The front surface includes a surface (52, 54) for cutting. Over time, contact with the ground will result in the cutting surface (52, 54) becoming beveled, or worn.

Regarding claims 15-24: The instant claims are directed to the attachment; therefore, the recitation of the backhoe or powered excavator is simply the intended use of the attachment. Since the Desmarais '444 patent discloses all the claimed features of the attachment, it anticipates the claims.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,808,027 to Anderson, cited previously by the examiner.

The Anderson '027 patent discloses apparatus having a connecting vehicle (not shown) with a connecting frame (36), a base (16), a curved front surface (24) and an edge (28, 30) designed for cutting. The apparatus is transported to an excavated area (e.g., Fig. 4) and is raised and lowered and used to spread dirt along the bottom. Although the Anderson '027 does not disclose that the apparatus is used specifically to smooth the walls of a swimming pool, it would be obvious to one having ordinary skill in the art to utilize the Anderson '027 patent for that purpose, since Anderson discloses in general a compacting device to be used wherever compaction and smoothing is needed. See col. 3, lines 64-67. As admitted by the Applicant, Specification, page 2, it is known in the art that the walls of a swimming pool must be smoothed.

Response to Arguments

8. Applicant's arguments filed 12/06/04 have been fully considered but they are not persuasive.

As detailed in paragraphs 4 and 5 above, the Solaja '449 and Desmarais '444 patents disclose the claimed subject matter highlighted by the Applicant, such as the front surface being perpendicular to the ground (Solaja) and the front surface having a surface for cutting (Desmarais).

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

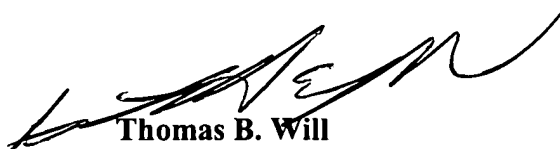
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan Mammen whose telephone number is (703) 306-5959. The examiner can normally be reached Monday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at (703) 308-3870. The fax number for this Group is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-1113.



Thomas B. Will
Supervisory Patent Examiner
Group 3600

NSM
2/21/05

Nathan S. Mammen